

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 74000 and A MC 74001.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an

instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Dean W. Frazier, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of March 1, 1983, the Arizona State Office, Bureau of Land Management (BLM), declared the unpatented Setzer Frazier #1 and the Frazier Setzer #2 lode mining claims, A MC 74000 and A MC 74001, abandoned and void because no proof of labor or notice of intention to hold the claims for 1981 was filed with BLM by December 30, 1981, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Dean W. Frazier appeals, stating that he had done everything he thought was required under the mining laws, including performance of annual assessment work for more than 25 years, evidence of which has duly been recorded in Yavapai County, Arizona. However, he does not allege that he sent the 1981 proof of labor to BLM even though BLM had twice advised him in 1981 of the necessity for recording the proof of labor with BLM to comply with the requirements of FLPMA. 1/

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located before October 21, 1976, to file with the proper office of BLM on or before October 22, 1979, a copy of the official record of the notice of location and evidence of assessment work performed on the claim or a notice of intention to hold the claim, and a proof of labor or notice of intention to hold the claim prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claims for 1981 was filed with BLM by December 30, 1981, BLM properly deemed the claims to be abandoned and void. J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

1/ We note that this requirement was met during previous years.

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining, Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 371-72.

BLM has stated that it did not receive the 1981 proof of labor. Appellant has not shown anything to the contrary. Therefore, it must be found that BLM was not acting improperly in its decision declaring the mining claims abandoned and void under the terms of FLPMA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge

